

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 191 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

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3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it[is to be circulated to the Civil Judge?

V.M. CHOKSHI

Versus

CENTRAL BANK OF INDIA

Appearance:

MRS VASAVDATTA BHATT for Petitioner with Mr.
H.M.Mehta, Senior counsel.

MR ARUN H MEHTA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 25/07/96

ORAL JUDGEMENT

Mr. V.M. Chokshi an employee of Central Bank of India has preferred the present writ petition under Article 226 of the Constitution of India against the

order of punishment passed by the disciplinary authority on 9.7.94 by which the following order is passed:

"Awarding a consolidated punishment of stoppage of one increment permanently in the time scale"

2. The petitioner was working as a clerk in the Gondal Branch of the respondent bank in the year 1983. On 22.8.83 he was charge sheeted for the following charges:

" Charge no.1.

Though serving in our bank Mr. Chokshi have been found of doing private business as an agent of National Savings Certificate either directly or through his wife, without written permission from the Competent Authority of our bank. Mr.Chokshi is charged with Gross Misconduct for the above act under para 19.5(j) or/and 19.5(a) of the Bipartite Settlement."

Charge no.2

" Mr. Chokshi have been found of inducing the clients of our bank to withdraw from their Bank's Accounts for investment outside in Higher Interest bearing National Savings Certificates.

This above act amounts to doing any act prejudicial to the interest of bank, in terms of para 19.5(j) of the Bipartite Settlement."

Thereafter Mr. J.P.Sharma was appointed as inquiry officer and he held a departmental inquiry against the present petitioner. On behalf of management only one witness was examined and through the said witness Shri Kanabar one letter and documents were produced on record. The Inquiry Officer came to the conclusion that charge no.1 was partly not proved by holding that Mr. Chokshi was not found doing any business as agent of National Savings Certificate during his tenure but he had not obtained any permission for having agency in the name of his wife. As regards charge no.2, he came to the conclusion that said charge was not at all proved. The disciplinary authority did not agree with the finding of the inquiry officer and issued show cause notice to the present petitioner as to why he should not be held guilty for both the charges and after giving him opportunity of making his submission he came to the conclusion that both the charges levelled against him were duly proved. In

coming to such conclusion, he has put reliance probably on the letter written to the management by one of the customers of the bank viz. Shri N.B.Shah.

3. Charge no.2 which is framed against the petitioner no.2 is as under:

"Mr. Chokshi have been found of inducing the clients of our bank to withdraw from their bank's accounts for investment outside in Higher Interest bearing National Savings Certificates.

This above act amounts to doing any act prejudicial to the interest of Bank, in terms of para 19.5(j) of the Bipartite Settlement."

4. Thus from the above wording of charge no.2, it would be quite clear that it was alleged that the petitioner had committed acts which were prejudicial to the interest of the bank and contrary to the terms of para 19.5(j) of the bipartite settlement.

Para 19.5(j) runs as under:

"doing any act prejudicial to the interests of the Bank or gross negligence or negligence in involving or likely to involve the Bank in serious loss."

If the evidence of Kanabar sole witness examined on behalf of management is considered, then it would be quite clear that he had categorically stated that as a matter of fact present petitioner was very helpful in carrying out the business of the bank and he had taken interest in the business of the bank. He had also stated that there were no occasion of he finding fault with the petitioner for any activities prejudicial to the interest of the bank. The charge also does not say that he committed any particular act which amounted to act of negligence which has resulted into serious loss to the bank. Therefore, in the circumstances, the disciplinary authority was not justified in reversing the finding of the inquiry officer as regards charge no.2

5. As regards charge no.1 the learned advocate for the respondent bank urged before me that when it is not at all disputed that the petitioner's wife was having agency of National Savings Certificate when he was charged and when he had not given any intimation of his wife having an agency, said conduct of him is contrary to

the circular of the bank dated 27.10.71. He further contended that conduct of him would come under clause 19.5(E). But there is no charge against the petitioner under clause 19.5(E) of the bi - partite agreement between the respondent-bank and its employees and consequently this court cannot consider said submission of him to hold him guilty of an alleged misconduct for which he was not at all charged.

6. As regards charge no.1, the inquiry officer as well as the appellate authority i.e. disciplinary authority came to the conclusion that the petitioner's wife was having the agency for the National Savings Certificate and no permission from the bank was obtained for holding the same in the name of his wife. But there is no rule or regulation of the bank even in the circular on 27.10.71 which does not prevent any bank employee for having agency of National Savings Certificate in the name of any of his relatives. Said circular only speaks about the prevention for insurance business and insurance agency in the name of relations. Said circular no doubt mentions that the employee must inform the bank if any of his relation is having any commission agency . I do not want to express any opinion at this stage as to whether holding of agency for National Savings Certificate would be covered under the said clause or not as it is not necessary for me to do so in view of the fact that present petitioner was not at all charged for the said alleged misconduct. When the circular does not mention that the permission was to be obtained by the bank employees for having agency for National Savings Certificate in the name of his relations, failure of the petitioner to obtain a permission for having agency in the name of his wife, would not amount to a misconduct and therefore, he could not be held guilty of charge no.1

7. No doubt the Appellate Authority has taken into consideration the letter of Mr. Shah which was produced through witness Kanabar. But it must be mentioned here that Mr. Shah was not at all examined as a witness in the departmental inquiry. When said Shah was not examined by the bank and when the bank wanted to rely upon the letter of the witness, the bank ought to have examined the said witness. Merely proving the signature on the letter would not amount to proof of the said letter. Proof of the signature is by way of leading secondary evidence. When the witness was not examined before the inquiry officer and when the delinquent had no opportunity to cross examine the said witness contents of the said letter could not be used against him. Therefore, the Appellate Authority has committed a grave

error in relying upon the contents of the letter and coming to conclusion that he had acted prejudicial to the interest of the bank.

8. Thus this is a case of no evidence against the delinquent for the charges with which he was charged. Therefore, the delinquent ought to have been held not guilty to any of the charges levelled against him. Therefore, in the circumstances, the finding recorded by the Appellate Authority and Disciplinary Authority will have to be interfered with by exercising power under Article 226 of the Constitution of India. In the circumstances I hold that the petition will have to be allowed. The order passed by the disciplinary authority on 9.7.84 is hereby quashed and set aside. The respondent bank should release all his increments which were stopped till his retirement as per the said order within 6 months from today, if he has now retired. Rule made absolute. No order as to costs.

(S.D.Pandit.J)